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Snelling, Richard.

Proposal for an act re land debentures... in Upper Canada.

A PROPOSAL

FOR

AN ACT

TO AUTHORIZE THE ISSUE OF

LAND DEBENTURES,

IN CONNECTION WITH

THE QUIETING OF TITLES TO REAL ESTATE IN UPPER CANADA,

AND WITH

Sales made by the Court of Chancery.

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PREFACE.

THE idea of this work was suggested by a learned Irish Judge, and the acknowledged ability with which he has advocated and demonstrated the utility of a system of *Land Debentures*, has induced me to bring the subject before the legal and mercantile community of this Province.

The system is deduced from considerations of utility and economy. It is of the first importance to every capitalist, merchant and trader, since it proposes an entire change in the form of a security well known and in universal use—*a Mortgage.*

The extension of trade and commerce in this Colony, and its increase in wealth and population, necessitate the removal of the many difficulties and great expenses which attend the creation and transference of mercantile securities, and if a system of *Land Debentures* can be adopted, the vast, complicated, and expensive machinery for the realization of a Mortgage imposed by Statutes and the rules of our Judiciary, will be altogether avoided.

A Bill for the quieting and confirmation of Titles to Real Estate, and to provide for the issue of Land Debentures, based upon the scheme put forth in the following pages, is already prepared, and will be introduced this Session by Mr. JOHN CRAWFORD, M. P. P. for the City of Toronto.

RICHARD SNELLING.

TORONTO, *25th March*, 1862.

LAND DEBENTURES.

It is unnecessary to enter into a minute examination of the origin and history of that well-known and universally received security—*a Mortgage.* Coote, in his Treatise on the Law of Mortgage, says, "it is a security founded on the common law, and perfected by a judicious and wise application of the principles of redemption of the civil law;" and "Courts of Equity (says Story) soon arrived at the just conclusion, that Mortgages ought to be treated, as the Roman law had treated them, as a mere security for the debt due to the Mortgagee; that the Mortgagee held the estate, although forfeited at law, as a trust; and that the Mortgagor had, what was significantly called an Equity of Redemption, which he might enforce against the Mortgagee, as he could any other trust, if he applied within a reasonable time to redeem, and offered a full payment of the debt, and of all equitable charges."(1)

The common legal Mortgage is a redeemable contract by which real or personal property is conveyed by the Mortgagor to the Mortgagee, as a pledge or security for the debt; the conveyance being absolute in form, but subject to a proviso, which is to become void, or by which the pledge is to be re-conveyed upon re-payment to the grantee of the principal sum secured with interest on a certain day, which is fixed by the security. Upon the non-performance of this condition, the mortgagee's estate becomes absolute at law, but remains redeemable in equity during a period limited by statute and under the rules imposed by Courts of Equity.

A mortgage is accompanied by two incidents—Redemption and Foreclosure. It is unnecessary to inquire into the nature of these incidents or qualities, for mortgages as a means of security are in universal use in this Province, and their practical operation as a security will be well known to every reader. The Mortgagee may not only institute his suit in equity to foreclose, he may sue at law on the covenant to pay contained in his mortgage, and at the same time, if out of

(1) Story's Equity Jurisprudence, 2nd Edit., §1013.

possession, he may bring an ejectment at law to obtain the possession, or he may pray a sale and look to the Mortgagor or his estate for any deficiency. The land-owner—the capitalist—the wholesale merchant—the small trader—the farmer —aye, and the artisan—are all equally familiar with such an instrument, and this must necessarily be so in a young colony where capital is limited, and the necessities for raising money by loan frequent and urgent. We all know by our every day experience, that notwithstanding the facilities which have been afforded by the registration laws for the investigation of titles, any one desirous of borrowing money, or obtaining goods upon the security of his land, often finds it a matter attended with inconvenience, delay, and expense. The borrower must first find the person willing to lend—or the merchant willing to advance the goods—on the security offered. This is a matter of more or less difficulty inherent in the nature of the transaction. Assuming this step, however, to be readily surmounted, he has still two difficulties to contend against.

First, as to the title of the estate.

Secondly, as to its value.

He must satisfy the lender as to these, which is generally a source of some delay, and assuredly of much expense.

When the loan has been contracted, the money paid, and the security given, both parties—Mortgagor and Mortgagee—are still liable to the inconvenience, delay and enormous expense, caused by the law.

Will not the experience of every capitalist and merchant in this Province bear testimony to the *inconvenience* attendant on the present form of a mortgage security? Have not many fully believed that when they received the mortgage, they possessed a ready and an immediately available instrument by which to collect the amount loaned, if unpaid on the days and times as it provided.

Admitted that a mortgage is now seldom prepared without the introduction of a power of sale for the purpose of enabling the Mortgagee, without litigation, to render his security immediately available in case of default, it is well known to every legal mind that the exercise of this power is often attended with risk, and always with expense, and that the vendor frequently finds difficulty in satisfying a purchaser as to title. A sale under a power is not considered a convenient mode of realization of the mortgage security.

Then as to the *delay*—which the statute and the process of the court interposes in the realization of a mortgage security—this has been felt by all, so much so that Parliament has more than once attempted to grapple with the difficulty. During the last Session a Bill was introduced by Mr. Mowat, but which did not pass, entitled: "An Act to provide for the foreclosure of Mortgages in certain cases without suit."

The preamble to this Bill was as follows :—

" Whereas many suits are brought in Upper Canada for the foreclosure of Mortgages, but in very few of such suits is the redemption money paid ; and whereas when payment is not made there results from the suit no advantage to the Defendant, while much unnecessary delay is occasioned to the Plaintiff, and costs are incurred by one party or both, and sometimes to a large amount ; And whereas it is expedient to establish a simple machinery for foreclosing without suit, leaving it to the parties against whom foreclosure is sought, to institute the necessary suits in the comparatively few instances in which there happens to be a serious contest respecting the right to forclose, or respecting the amount due ; And whereas also when Mortgagors, their heirs or assigns, who leave this Province, or have never resided in this Province, are guilty of any default, a foreclosure ought not to be thereby delayed for any greater length of time, or the Mortgagees put to greater costs, than if such Mortgagors, their heirs or assigns, resided or continued to reside in Canada, and further provision should be made with a view to preventing injustice of that kind as far as practicable."

As to *expense*, I need not urge this point upon the consideration of every Mortgagor or Mortgagee. It is well known that a simple suit for the foreclosure of a mortgage,—say for £100,—usually costs £25 ; and if the Mortgagor happens, as is frequently and almost universally the case, to be in embarrassed circumstances and has been sued at law by his creditors, all such creditors require to be made parties to the proceedings for foreclosure, and the expenses thereof are increased to £70, and even in numerous cases on record to £120, which, apart from the delay, prove a grievous infliction on the Mortgagee. The termination of an ordinary foreclosure suit (for which about 10 months are required) is frequently prolonged to a period of two years and upwards, in consequence of the necessity for bringing subsequent incumbrancers who having obtained a judgment at law, have thereupon issued and lodged with the Sheriff a writ against lands, and who are termed Incumbrancers by *fi. fa.* lands before the Court.

The difficulties resulting from *inconvenience*, *delay*, and *expense*, are so numerous that I might occupy pages in discussing and describing their character. Unfortunately, they are so patent and so seriously felt by every Capitalist, Merchant, and Trader in the colony, that any lengthened reference may be readily dispensed with.

It would evidently be a great advantage to the borrower—be he a wholesale merchant or a small trader, a farmer or an artisan—if he were enabled to borrow money by a cheap and expeditious process, while to the lender it would be the greatest possible boon, if, at the same time, he could be provided

with a secure and ready investment for his money, and a convenient, speedy, and non-expensive process for the realization of the security upon which it is loaned.

This double advantage may, I conceive, be obtained by a system of *land debentures*.

Of those problems which we *must* solve if we would live and prosper, if we would maintain a commercial credit among ourselves and a commercial reputation with all countries with whom we trade—problems which we can neither pass by on one side, nor push off to our successors,—the ready, non-expensive, freedom of exchange, convertibility, and easy transference of capital, is one of the most pressing and the most perplexing.

Previous to 1847, and in the interval between that year and 1857, we toiled and we accumulated. At these determinate cycles some mysterious agency interposed and with the sweeping force of an avalanche or an earthquake, we were, in great part, deprived of what we had saved; our power of of resuscitating our credit and our resources had been crippled and for some years destroyed. This was inflicted by the panic of 1847 and by the long continuing money panic of 1857, far more devastating in their nature than war. These panics are produced from well known causes. The wholesale merchant had his "line" at his bank or banks, which he had probably exceeded. The banks were collaterally secured by mortgages on real estate. The assets of the merchant were perhaps in excess of his liabilities, but these too were represented or in part secured by mortgages on real estate. The customer possessed a means of payment not readily realizable. The enormous cost and frightful delay which resulted in making these mortgages available, prolonged the crisis, and brought down many who would otherwise have borne up against the pressure. This outlay went to a non-producing class of the community.

A great system of Railways is rapidly rendering communication as easy to us as in any part of England or Europe. This railway system has opened up and settled very large tracts of country. Without railways, agricultural production, which is destined to be the great wealth of our Province, would have been retarded. As it is, land is being quickly disposed of, and as speedily cleared for agricultural and productive purposes, and confidence is being restored in our commercial relations at home and abroad.

Prosperity which appears to dawn from so many quarters on our colony—the continued flow of English capital to our Province, are evidences of restored credit at home. Our code of commercial ethics has been admittedly imperfect, and the strict commercial morality of the mother country now stimulates our business relations. This is therefore a fitting season

to add a new element to our commercial system, a machinery which must encourage production, induce development, increase capital, and add to our material prosperity.

Mr. Mowat, in a bill introduced by him last session, initiated the process auxiliary to the efficient working of the *land debenture* scheme; and I trust, as the bill did not pass last session, that he may be induced again to bring it forward during the present session of the Provincial Parliament; his proposed measure was intituled :—

"An Act for quieting Titles to Real Estate in Upper Canada.

"Whereas it is expedient to enable owners of land to have their titles or certain facts involved therein judicially investigated, and if established, to have the same conclusively declared to be so, with a view of quieting titles and of avoiding renewed and inconclusive investigations at every transfer or mortgage of the same land; and whereas it is also expedient to make certain amendments to the Law in regard to the limitation of suits with a like view to the quieting of titles; Her Majesty, &c., enacts as follows." And it provided :—

"That any owner of an estate in fee simple in land in Upper Canada shall be entitled to have his title judicially investigated and the validity thereof ascertained and declared; and he shall be so entitled whether his estate is legal or equitable, and whether subject to or free from any dower, leases, tenancies or other incumbrances."

It further provided that the application should be made to the Court of Chancery or any Judge thereof.

The machinery suggested was simple, inexpensive and complete.

Let us suppose that the title to an estate worth £3000, has been judically investigated and established by the Court, and that the owner desires to have the power of raising money by debentures. He takes the Court of Chancery certificate subject to fifteen debentures of £100 each which should be expressly mentioned therein, or if it be in the case of an estate sold by the Court for £3000, and that the purchaser desires to have the power of raising money by debentures, he takes the court deed subject to fifteen debentures of £100 each, which should also be expressly mentioned in the conveyance.

Those debentures should be drawn in a form to be settled by the Court, and should include a copy of the conveyance of the lands on which they are charged; so that the holder of a debenture should know, accurately, the nature and value of the security. Those debentures are handed to the owner or purchaser, together with his certificate or conveyance, and are to be considered as real property, descendible with the estate, but not merging in it, as long as they belong to the owner of the land. An account of them, and of every sale and transfer,

should be kept in the Court book. Every debenture entitles the holder to interest, at the rate therein mentioned, and also to repayment of the principal money at the time therein specified. This, of course, does not lead to any payment as long as the same person owns both the estate and the debenture. But the debenture may be assigned, at any time, by a short deed, to be registered in the books of the Court of Chancery-"Landed Estates." At the same time, the Court will cause a note of this assignment to be endorsed on the debenture; and the title of the new holder will then be perfect in law and equity, as if he had so much stock transferred in the books of any Bank. It will be the duty of the Court to make proper rules and forms to prevent forgeries or frauds in the assignments. An equitable assignment may be made by a written instrument, accompanied by a deposit of the debenture, and this equitable assignment should entitle the assignee to demand a legal assignment to be registered in the books of the Court. In case of the loss or destruction of any debenture, the Court is to have power, after proper proof and inquiries, to issue a new debenture in its place. The holder is armed with ample power to enforce the contract expressed in the debenture; but no proceeding shall be taken to recover more than two years' arrears of interest on a debenture. An assignment may be made to any number of persons, not more than four, with a condition that no smaller number shall be permitted to assign. When an assignment is made to trustees on this condition, on the death of one trustee the survivors cannot assign until a new trustee is appointed, either according to the provisions of the deed, or by an order of the Court; but a purchaser is not bound by the trust, provided he obtains a legal assignment on the books of the Court from the proper parties. Any holder of a debenture may, by a proper instrument, registered in the books of the Court, release and extinguish it altogether. We have put the case of a purchaser of an estate for £3000, who takes, at the same time, fifteen debentures of £100 each from the Court. (No inspection of the Registry can take place without the permission of the Court.) If he wants, at any time, a temporary loan of money, he will have no difficulty in procuring it from his banker, on a deposit of a suitable number of debentures. This, without any legal expenses, will be a sufficient equitable security, and a proof that his estate is still unincumbered. If he pays off the debt, he gets back his debentures, and is replaced in his original position, without anything appearing on the record to complicate his title. If the owner of an estate and debenture, or of a debenture only, desire to contract a permanent loan, he may hand the debenture to a Stockbroker, who will dispose of it in the market for its fair price, like so much Bank, Railway, or Gas Stock, and in this manner obtain the money with-

out any legal expense or unnecessary delay. The person, on the other hand, who wishes to procure an investment for his money, applies to his broker to procure him debentures of such a nature as he requires. The purchaser of a debenture has secured to him, by law, a perfect title to a first incumbrance, without possibility of deception on this point ; and he has also the advantage that the value of the land has been carefully investigated by a disinterested and competent tribunal. It is not too much to say, that no ordinary mortgage can be compared to such a security. Admitting even that the Court may make a mistake as to the value of an estate, it is most unlikely that such error will be so great as to prevent the debenture from being recovered; and it is certain that such cases will bear a very small proportion to the number of cases in which persons now lose money, which they imagine they have lent upon good security. At present there is in Canada no regular market or market price for such securities as mortgages, charges on land, &c. The person who wants money does not know how long he may have to wait, or how much he may be compelled to pay for it. On the other hand, the person who has money to lend does not know what terms he may be able to obtain, or how long he may be obliged to keep his money idle. One man may be for some months unable to procure a good investment at 8 per cent., while during the same period another man has succeeded in obtaining 10 per cent. for his money, on unexceptionable security. Each case is a separate transaction, affording no indication to enable any one to conjecture what may be the result in a different instance. But with the proposed plan of debentures, each will be able to borrow or lend at the market rate, which, of course may be subject to fluctuations.

Every new system, when it is proposed, is likely to meet with considerable opposition. To many minds its novelty is of itself a sufficient objection. This feeling is, perhaps, useful to the public, when it is not indulged in to an exravagant degree. It opposes a check to rash innovations, and requires that every new proposal shall be subjected to a rigorous examination. The result is, that many mischievous proposals are crushed, some useful ones are improved, and if a few good measures are rejected, that rejection only causes a certain delay. Men's minds become accustomed to a useful proposal by much discussion; the alarming novelty wears away; converts to reason are made from time to time ; the measure finally is carried, and after a short time men look back with wonder, and are unable adequately to conceive the feelings which led themselves or their ancestors to oppose an improvement which they now feel to be a thing of absolute necessity.

I shall not, therefore, feel discouraged at any amount of

opposition that may be offered at first to the proposed system of *land debentures*.

This proposal of *land debentures* at the present time has not the merit or the demerit of novelty. It was proposed not very long since in Ireland.

The first objection which is made by many to this and every other similar proposal is, that even if the details were perfect, so as most successfuly to acomplish its object, still that the object itself is mischievous, and that therefore, the proposal ought to be rejected.

Traders do not generally borrow to spend, but they borrow to pay: and so with farmers, if they borrow to spend, it is in the improvement of their Farm—in clearing, fencing, or draining, in the erection of out-buildings or the purchase of better and improved stock. If the trader borrows, it is in the case of the wholesale merchant, to increase his capital and to extend his trade; in the case of the retailer, to augment his facilities. If the wholesale merchant borrows he usually does so from his Banker, and if the retailer needs to offer real estate security it is generally to the wholesale merchant, who, in his turn requires to use the security so given, (now in the shape of a promissory note and collateral mortgage) with his Banker. In both of these illustrations the *land debenture* would offer the most convenient and the most inexpensive means of security free from the tedious and expensive and oft-times burthensome investigation, to which the *mortgage* on its first creation and on every succeeding transfer is exposed. Let us compare the two cases. Let us examine what are the enquiries to be made by a lender, when he is about to invest his money on mortgage, or a banker when he is about to take such a security to secure an overdrawn account or an advance to be made, or a wholesale merchant when he is about to supply a parcel of goods on credit, to a customer as to whose responsibility he may have some doubt although not sufficient to deter him from opening an account. They must each—1st. Examine the title of the Mortgagor to make the mortgage; 2ndly. It must be ascertained that the estate is not unduly depreciated by prior incumbrances; 3rdly. If a transfer of an existing mortgage is proposed, the title of the Mortgagee to make the transfer must be examined; 4thly. In this latter case the state of accounts between the Mortgagor and the Mortagee must also be ascertained, as if any payments have been made on account of the mortgage, the assignee will be bound by them; and 5thly. It must be ascertained that the land pledged is of sufficient value.

Now, in the case of a debenture, the first four of these five points are settled without the necessity of inquiry or the possibility of a mistake. The debenture gives, 1st, a parliamentary title to a charge upon the lands; 2ndly, unaffected by

any prior charges except those mentioned in the debentures ; 3rdly, the title to the debenture is complete by the transfer of the debenture on the Registry of the Court, just as the title to Bank or Gas stock is made by a transfer in the books of the Bank or Company ; and 4thly, the assignee is not affected by any payments made to prior holders unless such payments are endorsed on the debenture itself.

There remains, therefore, no matter of enquiry except the value of the land, and therefore, in every possible view of the case, the inquiries made by the purchaser of a debenture will be simpler and cheaper than those made by the purchaser of a mortgage, since the former extend to one only of the five subjects which must be examined by the Mortgagee. There is in effect only the value of the land to be considered, and this is not, in practice, found to be the chief source of delay or expense. Any one who has taken a mortgage will not fail to see how small a part of the delay and trouble has been caused by an investigation of the value of the land. In the vast majority of cases the value of the land is taken upon repute.

It is not too much to say that the mere inspection of a debenture will give a greater knowledge of the value of the land than a mortgagee possesses in ordinary cases ; and when it is considered that in addition to this the Court of Chancery "Landed Estates" will have in each case approved of the security, it may fairly be expected that they will be accepted by the public without further enquiry. Even if this should not turn out to be the case, still the most rigorous investigation that can be required in the case of a debenture, will be only a part, and that the smallest and least expensive part, of the investigation that must be made in the case of every mortgage.

After some time the credit of debentures in general must chiefly depend upon the results of experience. If the security turns out in fact to be always sufficient, the public will accept them without further enquiry ; but if any notorious cases occur in which the money lent, or any part of it, is lost, in consequence of the deficiency of the security, the public will then generally make some slight examination before a debenture is accepted.

I think that the former alternative is by far the more probable one, and that the examination made by the Judges, and the large margin allowed, will almost preclude the possibility of any debenture failing to realize the required amount. But even if such an unlikely event should happen as that a debenture holder should incur a partial loss (for a total loss in any case is obviously out of the question), the effect would be, not a general discredit of debentures, as mortgages do not fall into general discredit notwithstanding a few cases of total failure, but only this, that before being purchased they will be subject to an examination far less tedious and expensive

than ought to take place in every case of an ordinary mortgage.

Perhaps some persons may apprehend that frauds may be committed by an over-issue of debentures, similar to what has been charged against certain Corporations and Companies, and that this may lead to a depreciation of the security. It is not difficult to prove the impossibility of such an event. No land debenture can be issued without the sanction of a Judge, who is free from the slightest motive to permit an over-issue, but is under the strongest inducement to prevent it. I shall proceed to show in how simple a manner the debentures may be registered and kept within the control of the Court, at the same time that fraud and forgery are made almost impossible.

Let us suppose the case of a person purchasing an estate worth £3000, and wishing to get together with his conveyance 15 debentures for £100 each. This issue of debentures is recited in the conveyance of his estate, which also describes the land conveyed. This is, by the Act of Parliament, conclusive as against all the world. The debentures are then prepared, each debenture containing a copy of the conveyances. Each debenture is distinguished by a letter and number. The letter shews the book in which the counterfoil is to be found, and the number shews the position of the counterfoil in that book. The debentures in each estate are numbered in succession, say from A 1 to A 15, inclusive. The counterfoils follow in the order in Book A. Each counterfoil is of exactly the same shape and size as its corresponding debenture, and is a *facsimile* in every respect, except some slight difference to shew that it is a copy and not an original. Every part of the counterfoil is made of the same skin or parchment as the corresponding part of the debenture. On every transfer of the debenture, the Registrar makes an indorsement thereof on the debenture, and an exact copy of the same on the corresponding place on the counterfoil.

The following process takes place when the purchaser of a debenture requires to have the transfer to himself registered in the books of the Court. He hands into the Registrar his debenture, his deed of transfer, and an affidavit or declaration of the due execution of the transfer deed by the lawful owner of the debenture. The Registrar then compares the debenture carefully with its counterfoil in his books; and if he finds that they correspond, and that the deed of transfer has been duly executed by the proper party, he makes an endorsement thereof on the debenture, and a corresponding endorsement on the same place on the counterfoil, and then returns the debenture to the new owner thereof. He then files the transfer deed and affidavit, and sends a letter by post to the late owner of the debenture, to inform him that the transfer has been made.

With such precautions it seems almost impossible that any attempt at fraud or forgery could meet with even a temporary success. The counterfoil in the possession of the Court, which the public is never permitted to see, is a perfect check, not only to the forgery of a transfer, but also to the issue of a false or excessive debenture. The debenture in excess could never be transferred, since no counterfoil could be found to correspond with it. To make such a debenture would be the same absurdity as if a coiner were to make false money with the intention of hoarding it. The act would be without motive, and moreover it would not do any injury to any person.

Several questions may be asked respecting the manner in which the owner may deal with an estate subject to debentures, either in his own hands or already issued to the public. One general answer may be applicable to all such questions. The first existence of a debenture and its subsequent continuance are entirely at the option of the owner of the land: he can bring them into Court at any time for cancellation But he may want to sell a portion of his land upon which debentures have issued.

This resolves itself into two cases, according as he has already disposed of his debentures, or has them still in his possession. In the former case he is in the position of any other man who has encumbered his estate to the amount of half its value, and who therefore, of course, cannot make a perfect title to a purchaser. But he can make a far better title than if he had raised the same amount of money by a mortgage, for the debenture-holders will not have possession of the title-deeds, nor any estate in the land, nor any right, except merely to recover the amount of the debentures by a sale. The purchaser protects himself in the same way as if he was buying a portion of an estate which had been incumbered by a previous mortgage. He takes an indemnity deed making the portion of the estate which is not sold bound to discharge all the debentures except such proportion as he undertakes to pay, and in respect of which he therefore gets an allowance out of his purchase-money. Thus, suppose the entire estate is worth £3,000, and that the owner having raised £1,500 by the issue of debentures, wished to sell a part worth £500, he either covenants that the rest of the estate, which is worth £2,500, shall bear the entire charge of the debentures, in exoneration of the part which he sells, or that it shall bear a part only—say £1,250—and that the portion which he is selling shall bear the remaining £250, which therefore must be deducted from the purchase money.

Some will probably say, "Why do you make the debentures payable only at certain periods? It would be frequently convenient for the owner of an estate to have the power of paying off the debentures when he liked, or of paying them off by

gradual instalments if he preferred it." To this the obvious answer is, that as the debentures are all in equal priority, it is necessary that they should all be made payable at the same time. The right of redeeming and of demanding payment ought to be reciprocal, and the utility of the power of charging by debentures would be much diminished if the owner of an estate was liable at any moment, to have the amount of all the debentures levied from his estate. But it may be said, "Give the owner of the land a right to pay the debt at any time, but do not give the owner of the debenture a right to demand payment until the appointed time." This is possible. However, it is found that money is seldom borrowed on such terms on mortgages. I take the following passage from Lord St. Leonards' "Handy Book on Property Law," p.112 :—

"In case you do not pay the interest regularly, the mortgagee may compel payment of the principal and interest. You will always be in danger of the mortgagee calling in the money, and thus putting you to the expense of obtaining money elsewhere to pay him off, and of making a transfer of the mortgage to the new lender. You should inquire whether the lender is likely to want his money, or is in the habit of changing his securities. To avoid this danger it is sometimes stipulated, that the lender shall not call in the money for a given number of years provided the interest is regularly paid ; but in that case the lender will probably require an obligation from the borrower not to pay the mortgage off within that period."

The terms of every loan are a matter for stipulation between the borrower and the lender, and if the former requires any terms for his own convenience, which may cause loss or inconvenience to the lender, he must surely pay for them by an increased rate of interest. The fixing of a time for payment, however, has not this effect, as it is mutually convenient to both parties.

It is probable that the time fixed for the redemption of a debenture will generally be about ten years from the day of its first issue by the Court, in cases where the purchaser has no immediate necessity to borrow money. However, when he is obliged to borrow part of the purchase-money of the estate, he will make his arrangements beforehand, and appoint such time for the redemption of the debenture as shall be mutually agreed upon by the borrower and the lender. When the owner of an estate and debentures wants to borrow money, which he may wish to repay within a shorter period, he will find no difficulty in obtaining it from a Bank, on depositing his debentures with it.

The rate of interest will depend on the wishes of the person whose estate is to be subject to the debenture. If he has made arrangements for a loan before the debenture is issued

by the Court, the rate of interest will be settled according to agreement with the lender. In other cases it is probable that eight per cent. will be the rate generally adopted. If too low a rate be adopted, the owner might find it difficult to raise money on an emergency, except by selling his debentures for less than their nominal value. The rate of interest actually paid, will, however, seldom exceed seven per cent., on condition of punctual payment. When money is plentiful, it is probable that the owner of an estate will be able to raise money by means of debentures at a lower rate than even seven per cent.

It may be useful to give a short sketch of the proceedings likely to take place when the time fixed for payment of the debentures arrives. The owner of the land should, two or three months beforehand, enter into correspondence with the debenture-holders, to ascertain whether they will require payment or accept a renewal of their debentures. If all are willing to accept renewals, they lodge their debentures in Court, and get new ones instead. If, however, some holders require payment, then the owner of the estate must take steps to raise the money, or to have parties ready to accept the new debentures, and pay the necessary sums to those who require payment of the old debentures. If the owner of the land has the means, he may pay off as many of the debentures as he thinks proper, and retain them for his own use, to be issued if he should afterwards find it necessary or convenient. If the owner of the land finds himself in the possession of money any considerable time before his own debentures fall due, he will probably deem it prudent to invest this money in the purchase of debentures falling due as nearly as possible at the same time as his own. Thus he will not lose any intermediate interest; and when the time arrives for redeeming his own debentures, he will have no difficulty in obtaining the required sum from his bankers on an assignment of the debentures which he had purchased, and a deposit of the debentures which he redeems, and which will be held by the bankers until the purchased debentures are paid off.

Such are the steps that will usually be taken when the owner remains in possession of the entire estate. They will slightly vary according to circumstances, if he has sold any portion of it.

The short period of limitation for payment of the interest will have several good effects. It will facilitate dealing with a purchaser who will know that there is a very small limit to the utmost amount of interest that can be due on outstanding debentures. The short term of two years will lead to habits of punctuality. The readiness with which a debenture may be assigned will also lead to punctuality. If the interest is not punctually paid it will quickly be assigned to some one who will be able and determined to enforce punctual payment.

The books kept for the registry of debentures would probably not be numerous. It might be thought expedient not to give any debenture to a purchaser of land until his purchase deed was duly registered, and the memorial should state the number and value of the debentures. Thus all parties dealing with the estate would be made aware of its liabilities. Each debenture would, by its indorsements, tell its own history. It would be convenient, however, that an account should be kept in the form of a ledger, with an index of names, and a page opened for the account of debenture holder. Every transfer would be entered to the credit of the person to whom and the debit of the person by whom it was made. It would be sufficient to describe the debenture in this account by its letter and number. This book should be kept strictly private. But when any information was required, in case for instance of the death of any person, the Court would order a certificate to be given to shew what debentures were standing in his name.

The present Lord Chancellor of England, Lord Westbury, has introduced a measure which if carried, will materially affect the title to real estate in England. His Lordship's proposed amendment of the law of real property does not deal with the question discussed in these pages.

The object of Lord Westbury's bill is to give a Parliamentary, or to speak more technically, a statutory, title to a landed estate, be it large or small; and then to have it recorded in a public registry, so that it may be sold and passed as the shares in money stocks or joint stock companies are—by a simple mode of transfer. In order to insure the purchaser against flaws in the title, it is proposed that certain payments or premiums shall be paid by the owners of estates to Government; and that the Government, out of this fund, shall make good a false title. In fact, that Government shall, as it were, assure the title and guarantee the purchaser. That this is a very complicated matter, and will meet with opposition, there can be no doubt.

That it would be very advantageous and convenient that land should be made a commodity, and sold as readily as a horse or a cart, there can be no doubt; but still it is very doubtful whether Lord Westbury's bill, or those of Lord Cranworth and Lord Chelmsford, will be able to effect this desirable result. The one under debate is not to compel land-holders to register, but only enables them to do so if they desire it. It will, therefore, at the best, be a very long time before the whole of the land is registered, like so much Bank stock, and an estate can be passed with the ease with which a million of pounds worth of indigo could—by merely giving an order of transfer and having it duly registered.